UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUNTHERN DIVISION

CASE NO 1:03-CV-803

DARRYL LEE HAAN HON. DAVID W. MCKAEGUE

PLAINTIFF

v.

ATTORNEY GENERAL OF THE STATE OF MICHIGAN, et al

DEFENDANTS

REPORT AND RECOMMENDATION

Plaintiff filed his prose complaint in the United States District Court Middle District of Florida, Tampa Division Plaintiff paid the applicable filing fee, so his complaint was not subject to screening Under 28 U.S. C. & 1915. On November 3, 2003 the United States District Court for the Middle District of Florida issued an order transferring the case to this court. (Docket #4). Plaintiff named Michigan's Attorney General, Kent County Friend of the Court, his ex-wife Leisa Arndt, and her husband Robert Arndt as defendants.

Plaintiff's complaint is related to state-court child custody and support proceedings occurring in Kent County District Court primarily during the mid-1980's concerning the then minor children Brett and Laura Haan, born to the marriage of plaintiff and Leisa Haan. Plaintiff requests $50 million dollars in damages.

On March 26, 2004, I issued a report and recommendation (docket #31) recommending that the court grant the Michigan Attorney General's motion to dismiss. Judge McKeague has not yet had the opportunity to issue a decision addressing plaintiff's objections to the report and recommendation, (docket #33,34). Plaintiff has never achieved service in this case against Leisa or Robert Arndt, nor have they appeared. The matter is new before me on a June 23, 2004 motion for summary judgment filed by the Kent County Friend of the Court (docket #39) and multiple motions by plaintiff. (docket #'s 9, 36, 45,65, 68, 71, 72, 79). On June 24,2004, the court issued an order advising plaintiff of his opportunity to file a response to defendant's motion for summary judgment., (docket #43). Plaintiff has filed multiple responses, (docket #'s 44, 47, 49, 51,53,57,59,61,69,76,77) Upon review, I recommend

that defendant's motion be granted and that plaintiff's complaint against all defendants be dismissed for lack of subject mater jurisdiction. I further recommend that plaintiff's claims against Leisa and Robert Arndt be dismissed on the alternative basis of plaintiff's failure to achieve service. I recommend that plaintiff's motion requesting that the court set a trial date (docket #'s 9,45,65,68,71,72,79) be denied as frivolous.

Applicable Standards

Summary judgment is appropriate when the record reveals that there are no issues as to any material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P 56 (c): Shah v. Deaconess Hosp., 355 F.3d 496,498 (6th Cir. 2004); Gettings v. Building Laborers Local 310 Fringe Benefits Fund. 349 F. 3d 300, 305 (6th Cir. 2003); Carter v. University of Toledo, 349 F 3d 269, 272 (6th Cir. 2003). The standard for determining whether summary judgment is appropriate is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a mater of law." Terry v. LaGrois, 354 F. 3d 527, 530 (6th Cir. 2004) (quoting Anderson v. Liberty Lobby Inc., 477 U.S. 242, 251-52 (1986); see Martingale LLC v. Louisville, 361 F. 3d 297, 301 (6th Cir. 2004).

The court must consider all pleadings, depositions, affidavits, and admissions on file, and draw all justifiable inferences in favor of the party opposing the motion. See Matsushita Elec. Indus. v. Zenith Radio Corp, 475 U.S. 574, 587 (1986); DiCarlo v. potter, 358 F.3d 408, 414 (6th Cir. 2004). The party moving for summary judgment bears the initial burden of pointing out to the district court, that there is an absence of evidence to support the nonmoving party's case, but need not support its motion with affidavits or other materials "negating" the opponents claim.

See Morris v. Oldham County Fiscal Court, 201 F. 3d 784, 787 (6ht Cir. 2000). Once defendant shows that "there is an absence of evidence raising a triable issue of fact, " Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "A mere scintilla of evidence is insufficient, there must be evidence on which a jury could reasonably find for the (non-movant), Summers v. Leis 368 F.3d881, 885 (6th Cir. 2004) (quoting Anderson, 477 U.S. at 252).

Facts

The following facts are beyond genuine issue. On May 31. 1985. a judgment of divorce was entered in the Kent County Circuit Court dissolving the marriage of plaintiff and Leisa Haan. See Leisa Haan v. Darryl Haan, 84-53323-DM (Kent County Circuit Court May 31, 1985). Leisa Haan subsequently married Robert Arndt and changed her name to Leisa Arndt. The May 31. 1985 Kent County judgment of divorce recited that it was in the best interests of the then-minor children, Laura Haan and Brett Haan, to remain in the care, custody and control of their mother until Laura attained the age of eighteen in August 2001 and Brett reached the age eighteen in August 2002. The same judgment ordered plaintiff to pay child support in the amount of $34 per week until the children attained the age of eighteen or graduated from high school, whichever came first.

On March 1, 2004, the Pasco County, Florida, Circuit Court mailed to plaintiff a notice of registration of foreign support order, reflecting that as of December 29, 2003, plaintiff had amassed a $61,142.60 arrearage upon his Michigan child support obligation. On June 30, 2004, the Pasco County Circuit Court issued a notice of hearing

in the case of Department of Revenue o/b/o Leisa Arndt v. Darryl Lee Haan, no. 04-1185-DR. The court's notice advised plaintiff that on August 12, 2004, a hearing would be held on the petitioner's motion to establish arrearage and arrearage payment before the child support hearing officer.

Plaintiff filed his complaint on October 27, 2003. Laura Haan was twenty-one years old and Brett was twenty years old on the date the complaint was filed. Plaintiff attached as an exhibit to his complaint a letter dated August 5, 2002, addressed to judges of the Kent County Circuit Court and others, regarding case nos. 84-53323-DM-8, 85-1732-01-NC; 85-1732-02-NA, and demanding $50 million dollars, based upon purported violations of plaintiff's rights stemming from the 1985 divorce judgment and decisions made by the state courts concerning the custody of Laura and Brett Haan. It is apparent that in 1985 or 1986 state court proceedings occurred wherein Leisa lost custody of Laura and Brett, and the Haan children were placed in foster care. Plaintiff admits that he was summoned by the court to appear and was present during these court proceedings. Plaintiff does not claim that he ever pursued an appeal of any of the state-court decisions regarding his child

support obligation or the custody of his children.

On September 18, 1998, the Michigan Court of Appeals issued its decision in re Haan, No. 208205, 1998 WL 1989968 (Mich. Ct. App. Sept. 18, 1998). The caption of this case indicates that the lower court decision concerned minors Laura Haan, Brett Haan, and three other minors, Robert Arndt Jr. Nicole Arndt and Christopher Arndt. In the lower court, Michigan's Family Independence Agency was the petitioner. Leisa Arndt, Robert Arndt, and the plaintiff elected to participate in any state-court appeal. The above-referenced decision by the Michigan Court of Appeals was limited to addressing Leisa Arndt's appeal as of right "from a juvenile court order terminating her parental rights to Robert Arndt Jr., Nicole Arndt, and Christopher Arndt," 1998 WL 1989968, at # 1. The Michigan Court of Appeals affirmed the lower court's decision terminating Leisa Arndt's parental rights with regard to the three Arndt children.

Discussion

1. Kent County Friend of the Courts Motion for Summary Judgment.

Plaintiff argues that the Kent County Friend of the Court did not send him adequate receipts or totals concerning the child support payments for the years that his children were in foster care, and that plaintiff currently has "no idea" how much child support he has paid.

Plaintiff admits that at times he stopped payment of child support altogether to "get the (state) court's attention." Plaintiff contends that actions or inactions by the Kent County Friend of the Court with regard to his child support obligation and the custody and visitation rights under the divorce judgment were contrary to various subsections of Mich. Comp. Laws. 400.233. Upon review, it is a patent that this court lacks jurisdiction over plaintiff's purported claims.

Federal courts are courts of limited jurisdiction, which may exercise only those powers authorized by Constitution and statute. Kokkonen v. Gaurdian Life Ins.Co.of America, 51 U.S 375, 377 (1994). Therefore, "it is to be presumed that a cause lies outside this limited

jurisdiction. and the burden of establishing the contrary rests upon the party asserting jurisdiction." Kokkonen, 511U.S at 377 (citations omitted). The first and fundamental question presented by every case brought to the federal courts is whether it has jurisdiction to hear a case. even where the parties concede or do not raise or address the issue. See Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541 (1986). "Quite aside from whether the parties raise jurisdictional issues themselves, or even attempt to consent or agree to federal jurisdiction, federal courts have an independent obligation to investigate and police the boundaries of their own jurisdiction." Douglas v. E.G. Baldwin Assoc., Inc., 150 F.3d 604, 606 (6th Cir. 1998); see Community Health Plan of Ohio v. Mosser, 347 F. 3d 619.622 (6th Cir. 2003). ("Any court may address the issue of subject matter jurisdiction at any time, with or without the issue being raised by a party to the action.")

Plaintiff has the burden of proving this court's subject-matter jurisdiction. See COB Clearinghouse Corp. v. Aetna Healthcare, Inc., 363 F.3d 877,881 (6th Cir. 2004); Hudson v. Coleman, 347,F3d 138,141 (6th Cir 2004). "Specifically, the plaintiff must show that the complaint alleges a claim under federal law, and that the claim is 'substantial.' " Michigan Southern R.R. Co. v. Branch & St. Joseph Counties Rail Users Ass'n. Inc., 287F3d 568,573 (6th Cir 2002); see Musson Theatrical, Inc. v. Federal Express Corp., 89F3d 1244,1248 (6th cir. 1996). Mere reference to a federal statute does not establish federal jurisdiction. Michigan Southern, 287F3d at 574.

This court does not possess direct oversight powers over Michigan's courts. See Hood v. Keller, 341F.3d 593.597 (6th Cir. 2003); see also Wabeke v. Mulder, No. 03-2235.2004 WL 1380064, at #1 (6th Cir. June 17, 2004). The recourse available to plaintiff in response to an adverse decision of a state trial was an appeal to the Michigan Court of Appeals, an application for leave to appeal to the Michigan Supreme Court, and if necessary, a writ of certiorari from the United States

Supreme Court. It is patent that this court lacks jurisdiction to review the state-court decisions plaintiff attempts to challenge in this lawsuit. See District of Colunbia Circuit Court of Appeals v. Feldman, 460U.S. 462. 483 n. 16 (1983); Rooker v. Fidelity Trust Co.. 263 U.S.413. 415-16 (1923). "The Rooker-Feldman doctrine...holds that lower federal courts lack subject matter jurisdiction to engage in appellate review of state court proceedings." Peterson Novelties Inc v. City of Berkley. 305 F3d 386. 390 (6th Cir. 2002). In practice. this means that when granting relief on the federal claim would imply that the state-court judgment on the other issues was incorrect. federal courts so not have the jurisdiction. Hood. 341 F 3d at 597. Plaintiff's claims against all defendants are 'inextricably intertwined' with issues decided in state court proceedings. See Pieper v. American Arbitration Ass'n . 336F3d 458,460 (6th Cir. 2003)("When granting relief on the federal claim would imply that the state-court judgment on other issues was incorrect. federal courts do not have jurisdiction...."). cert. denied. 124 S. Ct. 1420 (2004); see also Marshall v. Bowles. No. 03-5818. 2002 WL 515915. at #1 (6th Cir. Mar.

15,2004); Baker v. Michigan Family Independence Agency, No. 03-1022,2003 WL 21674747, at #1 (6th Cir. July 16, 2003); Riser v. Franklin County Court of Common Pleas, No. 02-4309, 2003 WL 21774011, at #1 (6th Cir. July 30, 2003) (district court properly found plaintiff's claims barred by the Rooker-Feldman doctrine because he sought to relitigate his prior state court actions, even though his intent to do so was veiled by nominal allegations of constitutional violations); Akers v. Bishop, No. 02-6235, 2003 WL 21019171, at #2 (6th Cir.), cert denied, 124 S. Ct. 431 (2003).

Furthermore, for nearly a century and a half, the Supreme Court has held that the federal courts lack jurisdiction over questions of divorce, alimony, or child custody. See Barber v. barber, 62 U.S. (21 How.) 582,584(1858); see also Drewes v. Ilnicki, 863 F.2d 469, 471 (6th Cir. 1988); Denman v. Leedy, 479 F.2d1097, 1098 (6th Cir. 1973)(per curiam). "Even when brought under the guise of a federal question action, a sit whose subject is domestic relations generally will not be entertained in a federal court."

Firestone n Cleveland Trust Co. , 654 F.2d1212, 1215, 6th Cir. 1981 Question of Divorce are within the exclusive Province of the state courts, McLaghlinv. Cotner, 193 F.3d410,412 6th Cir. 1999. the hole subject of the domestic relations of husband and wife , parent and child, belongs to the laws of the state and not to laws of the united states. In re Burns, 136 U.S. 586,593-94, 1980 ,

see

Partridge v Ohio, 03-3389,2003 WL 22474620, at *1 6th Cir. Sept 4, 2004 , federal courts lack jurisdiction where the action is mere pretence and suit is actually concerned with domestic relations issuses , evans v Klaeger , no 00-4353, 2001, WL700825, at **1 6th Cir. June 12, 2001, mensah v st joseph county family independence agency , no, 98-1726, 1999 WL 623733, a**2 6th Cir. Aug.11, 1999. The Supreme Court has consistently reaffirmed the longstanding doctrine that the federal courts lack power to issues divorce , alimony and child custody decrees . see Ankenbrandt v Richards, 504 U.S. 698,703-07 1992. I recommend that plaintiffs complaint against all defendants be dismissed for lack of subject matter jurisdiction.

DEFENDANTS LEISA ARDNT AND ROBERT ARDNT

Rule 4,. M of the Federal Rules of Civil Proceedure provides that , if service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint , the court , upon motion or on its own initiative after notice to the plaintiff , shall dismiss the action without prejudice as to that defendant , plaintiff filed his complaint on October 27, 2003 . plaintiff period within which to achieve service upon these defendants expired on Febuary 25, 2004 , I recommendation services as notice to the plaintiff of pending dismissal of his claims against these defendants for failure to achieve service, see fed R Civ.P 4 m.

PLAITIFFS MOTIONS

Plaintiffs motion for the court to set a trial date , docket #36 should simply be denied as moot , while all plaintiffs other pending motions could be denied on the same basis, upon review , I recomeend that plaintiffs motions be denied as frivolous.

On July 13, 2004, plaintiff filed a motion to have that can't townie friend-of-the-court held in contempt for purportedly did the violating a federal protective order. (docket # 65 }. Plaintiffs attached to his motion a copy of the June 30, 2004 notice of a hearing issued by Pasco County, Florida circuit court advising plaintiff that a hearing will be conducted on August 12, 2004, to it establish plaintiffs child -support arrearage and arrearage payment. Plaintiffs' motion to have a defendant held in contempt reflex plaintiffs belief that his in initiation of this civil law suit some how precluded legal proceedings against him in the Florida courts. In defiant terms, plaintiffs' motion states verbatim as follows:

I, Darryl Lee Haan, will attend this hearing and advise the Department of Revenue, state of Florida of the end and a violation of a federal protection order, and placed the Department of Revenue and of the state of Florida under federal arrest, for violating a of a federal protection order from the United States District Court, Western District of Michigan, Southern division, if the Department of Revenue, of the state of Florida, does not reframe from harassment and filing

anything against,Darryl Lee Haan, until, I, may appear before Hon. David W.McKeague and his court, to present my case 1;03-cv-803, at that date of trial of civil suits and federal criminal charges. Docket #65. this court has never issued a protective order in plaintiffs'favor and plaintiffs notice this fraudulent. There is simply no basisupon which to find any party or non- party to this lawsuit in contempt of a court order that does not exist, much less any authority for a private individual to arrest Florida's Department of Revenue.
I recommend that plaintiffs' motion be denied as frivolous.

Plaintiff has filed a document labeled access a motion for protective order. Docket #9. The motion was not accompanied by a proof of service indicating that plaintiff had served this document upon defendants.The purported motion was not accompanied by any brief , and the entire document consists of three short paragraphs which fell to cite any supporting Legal authority. Plaintiffs' motion reflects his concern that Michigan authorities will arrest him if he appears with in the state of Michigan, and asserts that it would be difficult for him to conduct this civil lawsuits if he was held in state

custody. Michigan detainee's and prisoners retain access to this court, and their law suits are a sighifacant portion of the cases filed and maintained in this court. Plaintiffs request that this court, under theguise of some sort of protection order in a civil case, enjoy the state of Michigan fromenforcement of its criminal and civil contempt laws against plaintiffs, is devoid of legal support and should be rejected as utterly frivolous.

Plaintiff has filed a series of motions asking this court to bring criminal charges against defendants. Docket#s 45,68,71,72,. the Judiciary is obviously not the branch of the government of the United States charged with the responsibility of initiating a federal criminal prosecutions.As a defendant correctly pointed out docket #63, and a request to havea federal criminal charges initiated should against defendants be addressed to the United States Attorney's Office, which is part of theexecutive branch. Uncertain

Plaintiffs most recent motion is a request that this court transfer plaintiffs lawsuits back to the United States District Court for the Middle District of Florida, Tampa division. Docket #79. plaintiff has not identified any legal basis for ordering the requested transfer. Sections 14 04 or 14 06 obviously doing that authorized transfer from this court to another federal court equally lacking subject matter jurisdiction. See 28 U. S. C. && 14 04, 14 06, Mills v. main, 118 F.3 D 37, 51 1st Cir. 1997 . a court without subject matterjurisdiction can not transfer a case to another court.

RECOMMENDED DECIISIONS

For the reasons set forth herein, I recommend that plaintiffs mo:ion

for the court to set a trial date DOCKET #36, be denied as a moot, and that all plaintiffs other pending motions, docket #s 9, 45, 65, 68, 71, 72, 79, be denied as frivolous. I further recommend that the motion for summary judgment by defendant Kent County friend of the court docket 39, be granted, and that all plaintiffs claims against all the defendants be dismissed for lack of subjects matter jurisdiction. I further recommend that plaintiff claims against defendants Leisa ardnt and Robert ardnt the dismissed on the alternative basis of plaintiffs failure to achieve service of process upon these defendants.

Dated July 30, 2004

Joseph G. Scoville

United States Magistrate Judge